

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PERCY LEE JONES, JR. AND	:	CIVIL ACTION
KEITH M. POWELL	:	
	:	
v.	:	
	:	
JOHNSON & JOHNSON, MCNEIL-PPC,	:	
INC., ET AL.	:	NO. 94-7473

MEMORANDUM ORDER

Presently before the court is plaintiff Keith Powell's Request for Extension of Time to File Notice of Appeal and his two pro se Motions for Extension of Time to File Appeal. Defendants have filed Motions to Strike Plaintiff Powell's Notice of Appeal as Untimely and to Deny the Request for Extension of Time to File Notice of Appeal.

Plaintiff had until September 22, 1997 to file any notice of appeal from the judgment in this case. On September 23, 1997, Mr. Powell filed both a Request for Extension of Time to File Notice of Appeal and a Notice of Appeal. Plaintiff stated that he had experienced difficulty securing legal representation. Mr. Powell was represented by counsel in this action who apparently declined to pursue an appeal.

On October 17, 1997 plaintiff Powell filed an additional Motion for an Extension of Time to File Notice of Appeal. With that motion, plaintiff asserted that he did timely file his Notice of Appeal on September 22, 1997 despite it being docketed on September 23, 1997. Plaintiff states that the time stamp used for after hours filing was not operating and that a

security guard instructed him to sign, date and hand write the time of the filing on the envelop. Plaintiff reiterated that he was delayed in filing a notice of appeal because of difficulty in securing legal representation.

The envelope within which plaintiff submitted his notice of appeal bears a handwritten date of September 22, 1997 and time of 7:08 p.m. with initials, presumably plaintiff's. Nevertheless, it appears that plaintiff's filing was not deposited into the receptacle for after hours filings. It appears that plaintiff returned the next day to submit his Notice of Appeal and indeed plaintiff does not state that he actually deposited it in the night receptacle on September 22, 1997. The standard procedure of the Clerk of Court is to docket any item dated and left in the night receptacle the following morning with the date of the previous day.

The court cannot find that plaintiff's Notice of Appeal was timely filed.

Defendants argue that plaintiff also has failed to show either excusable neglect or good cause as required under Fed. R. App. P. 4(a)(5).

Waiting until the last moment to attempt to make a filing is not prudent. Plaintiff, however, has not displayed "a complete lack of diligence" and appears to have made "substantial good faith efforts toward compliance." See Consolidated Freightways Corp. v. Lawson, 827 F.2d 916, 919 (3d Cir. 1987),

cert. denied, 484 U.S. 1032 (1988). The court will thus grant plaintiff a ten day extension.

ACCORDINGLY, this day of December, 1997, **IT IS**
HEREBY ORDERED that defendants' Motion to Strike Plaintiff
Powell's Notice of Appeal as Untimely is **GRANTED**; defendants'
Motion to Deny Request for Extension of Time to File Notice of
Appeal is **DENIED**; and, plaintiff's Request and Motions for an
Extension of Time to File an Appeal are **GRANTED** in that plaintiff
shall have until December 18, 1997 to file an effective notice of
appeal herein.

BY THE COURT:

JAY C. WALDMAN, J.